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Facebook 'Sponsored Stories' settlement gets preliminary approval

The Judge will decide on a final approval at a 'fairness hearing' in June next year

<http://www.itworld.com/demand-software/324941/facebook-sponsored-stories-settlement-gets-preliminary-approval>

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By John Ribeiro, IDG News Service

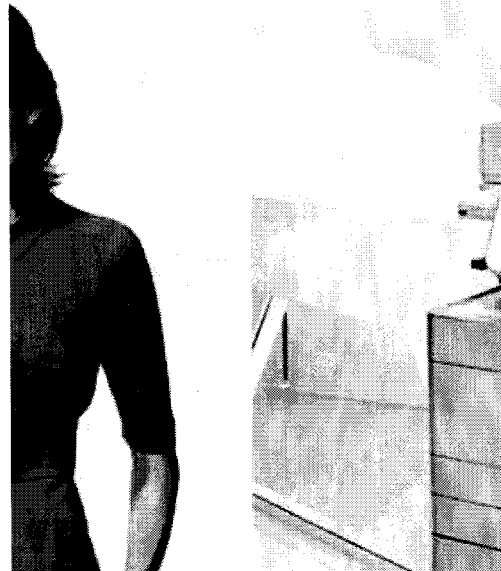
A court in California has given its preliminary approval to a revised class settlement in a lawsuit brought against Facebook by users who claimed that their names and likeness were used without their prior consent in "Sponsored Stories" advertisements shown to their online friends on the social networking website.

The court is however likely to have to consider at a 'fairness hearing' in June next year opposition to the settlement from organizations that among other things claim that the settlement does not provide a mechanism for taking parental approval before information from minors is used by Facebook. The court decides at a fairness hearing whether a class settlement is agreed upon as reasonable and fair.

A previous settlement was turned down in August by the U.S. District Court for the Northern District of California, San Francisco division with the Judge Richard Seeborg ruling that there were sufficient questions regarding the proposed settlement, including whether US\$10 million in cy pres recovery was fair, adequate, and reasonable. The settlement aimed to pay \$10 million to activist organizations and charities as cy pres fee as direct payment to all members of the class was not feasible. Another about \$10 million was earmarked for attorneys' fees and expenses.

Facebook agreed in the revised settlement to pay users in the U.S. who appeared in Sponsored Stories up to \$10 each to be paid from a \$20 million settlement fund.

The new proposed settlement covers nearly 125 million users in the class, which could see each member getting a few cents on a pro-rata basis if all file claims. The settlement relates to a class action lawsuit filed



in 2011 by Angel Fraley and others in which they alleged that Sponsored Stories constitute "a new form of advertising which drafted millions of (Facebook members) as unpaid and unknowing spokespersons for various products," for which they were entitled to compensation under California law.

The Judge will decide on a final approval for the settlement at a fairness hearing in June.

Children's Advocacy Institute and the Center for Public Interest Law in San Diego, California opposed the revised settlement in an updated amicus curiae memorandum last month, stating that its terms are contrary to the interests of the subclass of children involved. The organizations were not satisfied, for example, with the manner in which Facebook would seek parental consent under the settlement.

"If Facebook wishes to use the information posted online by a child, it must secure the ADVANCE permission of the parent for EACH such capture and republication event, with detailed disclosure of what will be published to others, and to whom it will be published," the organizations wrote in a filing.

The arguments presented in the brief by the two organizations as to the minor class do not compel a conclusion that preliminary approval is unwarranted, although the parties should ensure that they have adequately responded to them prior to the hearing on final approval, the Judge wrote in his order on Monday. CPIL and CAI said they intend to file a formal objection at any subsequent fairness hearing.

John Ribeiro covers outsourcing and general technology breaking news from India for The IDG News Service. Follow John on Twitter at @Johnribeiro. John's e-mail address is john_ribeiro@idg.com

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Facebook 'Sponsored Stories' Accord Wins Tentative OK

By Karen Gullo - Dec 4, 2012

Facebook Inc. (FB) persuaded a judge to grant preliminary approval of a \$20 million settlement of a lawsuit claiming it used subscribers' names without their permission to advertise products in its "Sponsored Stories."

Under the revised settlement, users can claim a \$10 payment, and funds left over will go to advocacy groups. An earlier settlement proposed by the company would have given users no payment, while lawyers for plaintiffs would receive as much as \$10 million, according to filings in federal court in San Francisco.

"The court is satisfied that the revisions to the terms of the settlement are sufficient to warrant preliminary approval under the applicable standards," U.S. District Judge Richard Seeborg, who rejected the earlier proposal, said in an order yesterday. He scheduled a June hearing to consider final approval of the agreement.

Facebook, the world's largest social-networking service, was accused in a 2011 lawsuit of appropriating the names, photographs and identities of users to advertise products without their consent. "Sponsored Stories" was a "misleading advertising scheme" using material posted by Facebook users on their profile pages, according to the complaint.

The company called the claims "meritless" in a court filing.

Revised Accord

The \$20 million fund in the revised accord is enough to pay \$10 to 2 million users, of the more than 120 million who may be eligible to file a claim. If so many of the users affected by the practice seek the payment that dividing the \$20 million among them would provide less than \$5 per user, all the money could be donated to advocacy groups, according to court filings.

Facebook, based in Menlo Park, California, also agreed to revise its terms of usage so subscribers can more easily see when they're being shown as endorsers of products and games for which they clicked a "like" button.

The revised settlement doesn't spell out how much the users' lawyers will be paid; they must submit a fee request to Seeborg for approval. The fees will come out of the settlement fund, according to court filings.

The case is *Fraley v. Facebook Inc.*, 11-cv-01726, U.S. District Court, Northern District of California (San Jose).

To contact the reporter on this story: Karen Gullo in San Francisco at kgullo@bloomberg.net

To contact the editor responsible for this story: Michael Hytha at mhytha@bloomberg.net

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